

No. 11151

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE LOGIN CORPORATION, a corporation,
Appellant,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Agreed Statement of Case..... 2

Appeal:

Certificate of Clerk to Transcript of Record on 29

Notice of 26

Orders Extending Time for Filing Record on27, 28

Statement of Points and Designation of Record on (CCA) 30

Statement of Points Relied upon by Appellant on (DC) 20

Certificate of Clerk to Agreed Statement of the Case 29

Complaint for Injunction and Treble Damages 22

Exhibits:

A—Sales Memorandum 11

B—Confirmation of Sale 12

E—Confirmation of Sale 13

Findings of Fact and Conclusion of Law..... 24

Judgment 19

Names and Addresses of Attorneys..... 1

Notice of Appeal	26
Orders Extending Time to Docket Appeal....	27
Order Extending Time for Filing Record on Appeal	28
Pretrial Order	15
Statement of Points and Designation of Record on Appeal (CCA)	30
Statement of Points Relied upon by Appellant (DC)	20
Stipulation of Facts:	
Dated Dec. 4, 1944	3
Dated Feb. 7, 1945	17
Stipulation Reserving to Defendants Right to Offer Further Evidence	14

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FRANCIS CARROLL,

315 Montgomery Street,

San Francisco, California.

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Office of Price Administration,

1355 Market Street,

San Francisco, California.

In the District Court of the United States, Northern
District of California, Southern Division

No. 23329-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff.

vs.

THE LOGIN CORPORATION, a Corporation,
and L. P. GAINSBOROUGH,

Defendants.

AGREED STATEMENT OF CASE

The plaintiff, Price Administrator, in his complaint, annexed hereto, alleged that the defendants sold Cuban Rock Lobster at prices in excess of those permitted by the General Maximum Price Regulation. He asked damages in three times the amount of the alleged overcharge, and an injunction.

The defendants' answer denied the allegation. They demanded a trial by jury as to all issues. The action was ultimately dismissed as to the defendant Gainsborough.

In the course of pretrial conferences the parties entered into the following "Stipulation of Facts" and into the following [1*] stipulation reserving to the defendants the right to submit testimony to show that if any violation occurred it was neither willful nor the result of failure to take practicable precautions:

*Page numbering appearing at foot of page of original certified Transcript of Record.

“In the District Court of the United States,
Northern District of California, Southern Division

No. 23329-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

THE LOGIN CORPORATION, a Corporation,
and L. P. GAINSBOROUGH,

Defendants.

STIPULATION OF FACTS

It Is Hereby Stipulated that the following are
the facts in the above entitled action:

The defendant, The Login Corporation, is a California corporation. (It is hereinafter called “Login.”) Its officers are: L. P. Gainsborough, president; W. N. Tomlinson, Vice-president, and E. Nevea, secretary. The principal place of business of the corporation is located at 1012 Bank of America Building, 300 Montgomery Street, San Francisco, California.

Compania Commercial Gainsborough is a Cuban corporation, (it is hereinafter called “the Cuban corporation”). Its principal place of business is located in Havana, Cuba. It is an exporter; not a packer or canner. Its president is Jacques Kartun.

Primarily Login operates by negotiating sales

for others to purchasers secured by Login for which Login is paid a percentage sales commission. It acts in this manner [2] for more than thirty manufacturers or suppliers. At times Login acts as an importer in its own behalf. These occasions generally occur when it wants to introduce to the market a product for which there is no present sales demand. Login in this situation may import and sell a commodity. If a demand is created, Login thereafter accepts orders for submission to foreign suppliers, —Login acting as sales agent only.

In this manner, Login, prior to March, 1942, arranged to import from Cuban canners a quantity of Cuban Lobster to see if it could be successfully introduced in the San Francisco Market. This lobster arrived in March of 1942. Fifty cases were sold by Login at Thirteen and 50/100 Dollars (\$13.50) a case, and because the sales were made in March it established a ceiling price for Login at Thirteen and 50/100 Dollars (\$13.50) on any future sales Login might make in its own behalf as an importer.

A strong demand was created for Cuban Lobster. However, the General Maximum Price Regulation became effective in May of 1942. At this time Login discontinued handling Lobster, despite a great demand for it, for these reasons:

The price of Lobster was rising steadily in Cuba. Because of the high price, and its low ceiling, Login could not have imported, and sold, in its own behalf. When the O.P.A. later specifically exempted selling agents of a foreign seller from the price

regulations, the price of lobster in Cuba had risen so drastically that Login preferred [3] not to handle it even on this basis.

However, during this period importers in San Francisco did import and sell many thousands of cases in response to the demand.

The sales involved in the present action arose in this manner:

In October of 1943, Login, as sales agent, started selling Cuban lobster for the Cuban corporation for export to Hawaii. This lobster was to be routed through Florida and San Francisco. It was necessary to ship a full carload in order to avoid the extremely high "less than carload" rates. Approximately 334 cases were needed to make up the full carload destined for Hawaii.

Login had been under pressure to bring lobster into the San Francisco market. It therefore notified a local food broker that although Login could not import and sell lobster because of its ceiling, if buyers had ceilings that permitted them to do so, and wished to import lobster,—Login could arrange the purchase from its principal in Cuba. The broker was notified that Login could act only as sales agent.

On this basis orders were taken in December, 1943, for 334 cases of lobster through the local broker. This broker, E. L. Roberts & Co., issued a "sales memorandum" to the purchasers showing that he acted as agent for the Cuban corporation. A copy of one of the sales memoranda is attached hereto and marked Exhibit "A."

Login received from the broker Roberts a dupli-

cate sales memorandum and itself issued to the purchaser a confirmation of sale which stated that Login was acting as agent for the Cuban [4] corporation. A correct copy of a confirmation of sale is attached hereto and marked Exhibit "B."

When the taking of the orders was completed, Login as agent issued a confirmation of sale to the Cuban corporation showing the sale of 1250 cases of lobster to "various buyers in San Francisco Bay Area and Hawaii" by Login as agents for the Cuban corporation. A correct copy of this confirmation of sale is attached to the accompanying Exhibits and marked Exhibit "E."

The lobster in question was shipped from Cuba at the direction of the Bank of California to Kenneth Kittelson and other forwarders in Florida. There it was cleared through customs, and the carload was shipped with the knowledge and consent of the Bank of California, consigned as follows: "Consigned to Login Corporation, c/o Haslett Warehouse, 115 Townsend St., San Francisco, California." On arrival the car containing the lobster was shunted onto the spur-track of Haslett Warehouse Company at 115 Townsend Street, and from there deliveries were made to the various buyers from freight car on siding.

The financing of the transaction was as follows: In October of 1943 Login arranged that the Bank of California would issue a letter of credit to the Cuban corporation, authorizing it to draw on the bank at Seventeen and 00/100 Dollars (\$17.00) per case for the entire carload of lobster. The letter of

credit agreement provided that the lobster be consigned to Florida freight forwarders and that drafts on the bank "must be accompanied with invoice, consular invoice and entire set of negotiable 'on board' ocean bills of lading made out to the bank."

The letter of credit agreement under which the credit was opened also provided that Login recognized the Bank's

"* * * ownership in and unqualified right to the possession and disposal of all property shipped under or pursuant to or in connection with the Credit or in any way relative thereto or to the drafts drawn thereunder, whether or not released to any of us on trust or bailee receipt or otherwise, and also in and to all shipping documents, warehouse receipts, policies or certificates of insurance and other documents accompanying or relative to drafts drawn under the Credit, and in and to the proceeds of each and all of the foregoing, until such time as all the obligations and liabilities of us or any of us to you at any time existing under or with reference to the Credit or this agreement, or any other credit or any other obligation or liability to you, have been fully paid and discharged, all as security for such obligations and liabilities; and that all or any of such property and documents, and the proceeds of any thereof, coming into the possession of you or any of your correspondents, may be held and disposed of by you as herein provided; and the receipt by you, or any of your correspondents, at any

time of other security, of whatever nature, including cash, shall not be deemed a waiver of any of your rights or powers herein recognized."

Payments were made against the letter of credit on December 6, 13 and 27, 1943, so that the entire credit thereby established was exhausted on December 27, 1943, and the Cuban corporation paid in accordance with the terms of said letter of credit the \$17.00 per case by that date.

Thereafter, and in the months of February and March, 1944, and with the consent and knowledge of the Bank of California, the shipments were made from the freight forwarders in Florida as aforesaid to said Login Corporation as aforesaid and a bill of lading upon the shipment was issued against said shipment, being P.F.E. car No. 94433, which said bill of lading was delivered to Login Corporation. Upon arrival the lobster was billed to the various buyers at \$23.50 per case by Login on invoices stating: [6]

"* * * The Login Corporation, 300 Montgomery Street, San Francisco, as agents for Cia Commercial Gainsborough Co. S.A. * * *"

Some of the local purchasers made payment at the time they originally gave their order. The balance made payments to Login on receipt of the lobster. Login paid the amounts as received, up to Seventeen Dollars (\$17.00) per case, to the Bank of California, to reimburse it for the amounts that

the Cuban corporation had drawn upon it. The remaining Six and 50/100 Dollars (\$6.50) per case was accounted for by Login who rendered an account sales to the Cuban corporation showing all sales and amounts collected, less freight, insurance, shipping charges, and one per cent charge by Login for guaranteeing the letter of credit. The balance was remitted to the Cuban corporation, less Login's five per cent commission.

The amount realized by Login, as sales agent, on these sales for the Cuban corporation at Twenty-three and 50/100 Dollars (\$23.50) a case was its five per cent commission, or One and 17/100 Dollars (\$1.17) per case.

On the March, 1942, transaction in which Login imported and sold in its own behalf at Thirteen and 50/100 (\$13.50) a case, the amount it realized was Three and 90/100 Dollars (\$3.90) per case, or a profit of nearly thirty-five per cent.

The Office of Price Administration, six months prior to the sales in question here, was informed by Login that it had made sales transactions for the Cuban corporation, as its selling agent, in almost the identical manner set forth in this stipulation. No action was taken by the Office of Price Administration.

This information was given by Login to the Office of Price Administration in the course of an investigation by the Office of Price Administration of pineapple sales made by [7] Login. The information was contained in a sworn statement in writing taken by an O.P.A. representative from the Vice-

President of Login on June 25, 1943. The statement recited similar transactions by Login, in regard to canned pineapple. It recited that Login had originally imported 3,000 cases of canned pineapple and sold it for its own account in March of 1942, at Nine and 25/100 Dollars (\$9.25) per dozen, thus establishing Login's ceiling at Nine and 25/100 Dollars (\$9.25). Thereafter, and subsequent to the General Maximum Price Regulation Login made sales of pineapple only as sales agent for the Cuban corporation. The statement informed the Office of Price Administration that Login was then working on sales, as sales agent, of 20,000 cases at a price of Ten and 15/100 Dollars (\$10.15) per dozen—i.e. a price above Login's own ceiling as an importer in its own behalf.

The Office of Price Administration, after receiving the information contained in said sworn statement, never communicated with Login either to approve or disapprove the method of business disclosed by the statement.

Dated: Dec. 4th, 1944.

GEORGE A. FARADAY,
W. H. BRUNNER,
Attorneys for Plaintiff.

KEESLING & KEIL,
FRANCIS CARROLL,
Attorneys for Defendants."

“EXHIBIT A”

Sales Memorandum

Customer's Copy

E. L. Roberts & Co.

Crowe-Roberts Co.

Manufacturer's Representative

260 California Street . San Francisco, 11

No. 3080

Sold To: Schumacher Date Sold Nov. 29, 1943
Brothers Date Ship At once on
701 Battery St. arrival
San Francisco, F. O. B. Haslett Whse.,
Calif. S.F.

For Account of E. L.
Roberts & Co., as agents
for Cia Commercial-
Gainsborough, S.A.

Terms:

How Ship Net

Quantity	Size	Commodity	Price
25 cs.	48½'s	Cuban Bolero Lobster.....	\$23.50

#3947

Subject to Confirmation of Seller. This Is Not an
Invoice. This Memo Becomes Void When Sale
Is Covered by Contract. [9]

“EXHIBIT B”

San Francisco

Our No. 3947 (X240)

Havana

Date 12/2/43

London

Rotterdam

Honolulu

The Login Corporation

Factors

300 Montgomery Street

Phone DOuglas 8780

San Francisco, U. S. A.

To E. L. Roberts & Co.

260 California St., San Francisco 11

as Agents for Cia Comercial-Gainsborough, S.A.

We Confirm the Following Sale:

Buyer Schumacher Brothers, 701 Battery St.,
San Francisco, Calif.F.O.B., F.A.S., C.I.F. Haslett Warehouse,
San Francisco

Terms: Net

Shipment Prompt on arrival

Quantity	Commodity and Specifications	Price Per cs.
25 cs.	48½'s Bolero Brand Cuban Rock	
	Lobster	\$23.50

Accepted:

Schumacher Brothers

/s/ LEROY CRAMER.

S/M 3080

11/29/43

THE LOGIN CORPORATION.

By /s/ W. N. TOMLINSON.

“EXHIBIT E”

San Francisco	Our No. X-240
Havana	Date 10/7/43
London	
Rotterdam	
Honolulu	

The Login Corporation
 Factors
 300 Montgomery Street
 Phone DOuglas 8780
 San Francisco, U. S. A.

To Cia Commercial Gainsborough, S.A.
 Aguiar 363, Havana, Cuba

We confirm the following sale:

Buyer Various buyers in San Francisco Bay Area
 and Hawaii

F.O.B., F.A.S., C.I.F. San Francisco

Terms: \$17.00 per case advance by Letter of
 Credit. Balance when remittance received from
 buyers

Shipment November

As Agents for Yourselves

Quantity	Commodity and Specifications	Price Per cs.
1250 cs.	48½'s Faney Cuban Rock Lobster.....	\$23.50

Our commission 5% and 1%
 plus bank charges for financing

This Transaction was confirmed by you by Wire
 10/7/43.

THE LOGIN CORPORATION.

[Title of District Court and Cause.]

STIPULATION RESERVING TO DEFEND-
ANTS RIGHT TO OFFER FURTHER EVI-
DENCE

It Is Hereby Stipulated that regardless of the stipulation of facts in the above entitled action entered into between the attorneys for the plaintiff and the attorneys for the defendants there is reserved to the defendants the right to submit testimony to show that if there were any violation by the defendants of the Emergency Price Control Act or of any regulation issued thereunder, said violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, if any occurred.

Dated: December 9, 1944.

GEORGE A. FARADAY,
W. H. BRUNNER,

Attorneys for Plaintiff.

KEESLING & KEIL,
FRANCIS CARROLL,

Attorneys for Defendants.

There is no claim of any violation as to the main portion of the lobster, which went to Hawaii. The lobster involved is the 334 cases which went to San Francisco purchasers. As to this, the principal question was whether or not these were purchases by persons dealing "directly with a foreign seller whose place of business is located outside of the continental United States, or with his selling agent

wherever located" within the meaning of the O.P.A.'s Maximum Import Price Regulation which then provided in paragraph 2 of Article I:

"Purchases from foreign sellers excepted from this and other price regulations. Neither this regulation nor any other price regulation (unless it contains express provision governing such purchases) shall apply to the purchases of any commodity to be imported into the continental United States by any person who deals (1) directly with a foreign seller whose place of business is located outside the continental United States or (2) with his selling agent wherever located." (Max. Imp. Price Reg. issued Aug. 20, 1943, 8 Fed. Reg. 11681, Pike & Fisher, O.P.A. Service, paragraph 21, p. 141)

If they were such, the transaction was not subject to price control.

At a pretrial conference the trial judge ruled that the defendant Login was not the "selling agent" of the Cuban corporation, and that the sales therefore were subject to price control. The order provided:

"(Title of Court and Cause)

PRETRIAL ORDER

This cause came on for pretrial conference before the Hon. Michael J. Roche, Judge of the United States District Court, on Saturday, December 16,

1944, W. H. Brunner, Esq., appeared as the attorney for the plaintiff and Francis Carroll, Esq., appeared as attorney for the defendants.

Based upon proceedings at said pretrial conference, it is ordered as follows:

1. Upon the stipulation of facts entered into by the parties to said action, the Court finds that Login Corporation, as a matter of law was not the "selling agent of a foreign seller," with reference to so much of the canned Cuban Rock Lobster shipped in PFE Car No. 94433, as was sold by it to various wholesale buyers in the San Francisco Bay Area.

2. Upon said stipulation and such finding above set forth, the Court finds that the sales hereinabove referred to, were subject to price control under the provisions of the General Maximum Price Regulation and that the highest price that defendant might lawfully have charged for such sales and deliveries made by it in February and March of 1944 out of car referred to above was \$13.50 per case only, and no more.

3. At the trial of this Action, the issues to be tried by the Jury are limited to finding the quantity of sales made by defendant to wholesalers over and above the lawful maximum price of \$13.50 per case, and the dollar amount of overcharge made by the defendant, the assessing of damages on such overcharges, and to finding whether or not the action of defendant in making said sales above such maximum price was not willful or the result of de-

fendant's failure to take practicable precautions to avoid the occurrence of the violations.

4. Further hearing and the trial of said action be and the same is hereby continued to the time of trial set for January 30, 1945.

Dated this 8th day of January, 1945.

MICHAEL J. ROCHE,

Judge of the United States
District Court."

Thereafter the parties on February 7, 1944, stipulated to the amount of lobster sold in San Francisco and that if any violation occurred it was not willful. The stipulation provided:

"In the District Court of the United States, Northern District of California, Southern Division

No. 23329-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff.

vs.

THE LOGIN CORPORATION, a Corporation,
and L. P. GAINSBOROUGH,

Defendants.

STIPULATION OF FACTS

It Is Hereby Stipulated:

1. That of the Cuban Rock Lobster referred to in the stipulation of facts dated December 4, 1944,

on file herein and in the Pretrial Order made by the above entitled court, the [14] number of cases of said lobster which was sold to wholesale buyers in the San Francisco Bay Area was three hundred and thirty-four (334) cases; that the price at which said lobster was sold was Twenty-three and 50/100 Dollars (\$23.50) per case.

2. That if any violation of any price regulation occurred in the making of said sales said violation, if any, was neither willful nor the result of the failure of the defendants to take practicable precautions to avoid said violation, if any.

3. That the making of this stipulation is not an admission on the part of The Login Corporation that any violation occurred.

Dated: February 7, 1945.

GEORGE A. FARADAY,
W. H. BRUNNER,
Attorneys for Plaintiff.

KEESLING & KEIL,
FRANCIS CARROLL,
Attorneys for Defendants.”

The trial court thereupon rules that no question of fact remained for determination by a jury and entered its judgment awarding the plaintiff damages against the defendant Login for the actual amount of the overcharge, but denying the injunction. The judgment provided:

“(Title of Court and Cause)

JUDGMENT

“The above entitled action came on regularly for trial on Monday, February 12, 1945, before the Honorable Michael J. Roche, Judge of the United States District Court. The plaintiff was represented by W. H. Brunner, Esq., and the defendants by [15] Francis Carroll, Esq. It appeared to the court that as a result of the pretrial order made on December 16, 1944, and of the stipulation of facts entered into on February 7, 1944, no question of fact remained for determination by a jury except the compilation of the amount of the damages, and the attorney for the plaintiff having stated that the action might be dismissed as to the defendant L. P. Gainsborough, it is

Ordered, Adjudged and Decreed:

1. That plaintiff's application for injunction be and the same is hereby denied.
2. That said action be dismissed as to the defendant L. P. Gainsborough.
3. That plaintiff have judgment against the defendant Login Corporation for the sum of \$3,340.00.

Dated: This 28th day of March, 1945.

MICHAEL J. ROCHE,

Judge of the United States
District Court.

Approved as to form as provided in Rule 5(d).

FRANCIS CARROLL,

Attorney for Defendant.

W. H. BRUNNER,

Attorney for Plaintiff."

The defendant Login on June 13, 1945, filed its notice of appeal from that portion of the judgment providing that the plaintiff have judgment against the defendant The Login Corporation.

STATEMENT OF POINTS RELIED UPON BY APPELLANT

The points relied upon by the defendant and appellant The Login Corporation for the reversal of the judgment entered are:

Point Number One

(a) That the question to be determined by the trier of fact in the lower court was whether, as to the 334 cases of lobster, these were purchases by persons who dealt with the "selling agent" of a foreign seller within the meaning of the Maximum Import Price Regulation. [16]

(b) That in determining this question reasonable men could draw but one conclusion from the facts stipulated to, and these facts would support

but one inference, namely: They were purchases by persons who dealt with the "selling agent" of a foreign seller.

(c) That the trial court therefore at the time of trial would have been obliged to direct the jury to return a verdict in favor of the defendant and appellant because the transaction was not subject to price control.

(d) That the order and judgment of the trial court therefore were in error and that the judgment should be reversed with directions to enter judgment for the defendant and appellant.

Point Number Two

That if the defendant and appellant is in error in paragraph (b) of its first point then at all events the question to be determined in the trial court was one of fact for the jury, under proper instructions from the trial court and that court erred in determining the matter in pretrial conferences thus depriving the defendant and appellant of its right to a trial by jury.

KEESLING & KEIL,
FRANCIS CARROLL,
Attorneys for Defendants.

W. H. BRUNNER,
Attorney for Plaintiff.

Approved:

MICHAEL J. ROCHE,
Judge of the District Court.

[Title of District Court and Cause.]

COMPLAINT FOR INJUNCTION AND
TREBLE DAMAGES

Count One

1. In the judgment of the Price Administrator, the defendants have engaged in actions and practices which constitute violations of Section 4(a) of the Emergency Price Control Act of 1942, (Pub. Law 421, 77th Cong. 2d Sess., c. 26, 50 U.S.C.A. Appx., 901 et seq.), hereinafter called "the Act," in that they violated General Maximum Price Regulation, as amended (8 F.R. 3096)—Commodities and Services—effective in accordance with the provisions of said Act; and therefore, pursuant to Section 205(a) of the Act, the Price Administrator brings this action to enforce compliance with said Section 4(a).

2. Jurisdiction of this action is conferred upon this [18] Court by Section 205(c) of the Act.

3. At all times mentioned herein there has been in effect pursuant to the Act, said General Maximum Price Regulation, as amended, (8 F.R. 3096), establishing maximum prices for the sale of commodities including therein Cuban Rock Lobster.

4. Between the 1st day of December, 1943, and the 1st day of May, 1944, defendants sold and offered to sell, and continued to sell and offer for sale, Cuban Rock Lobster, at prices in excess of the maximum prices permitted by the said Maximum Price Regulation, as amended.

Count Two

1. Plaintiff, as Administrator, Office of Price Administration, brings this action for treble damages on behalf of the United States pursuant to the provisions of Section 205(e) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong., 2d Sess., c. 26, 56 Stat., 23), enacted January 30, 1942, hereinafter called "the Act."

2. Jurisdiction of this action is conferred upon this Court by Sections 205(c) and 205(e) of the Act.

3. Paragraphs 3 and 4 of Count I are incorporated by reference as if fully set forth herein.

4. None of the said purchases was made for use or consumption other than in the course of trade or business.

5. Plaintiff is informed and believes, and therefore alleges that three times the aggregate amount by which the prices received by the defendants in the transactions referred to in paragraph 4 of Count I exceed the maximum prices provided by said General Maximum Regulation, as amended, equals \$10,020.

Wherefore, the Administrator demands:

1. A permanent injunction enjoining the defendants, their officers, agents, employees, and all persons in active concert or participation with the defendants from: [19]

directly or indirectly selling, delivering or offering for sale or delivery, any Cuban Rock Lobster at

prices in excess of those established by General Maximum Price Regulation, as amended, or otherwise violating or attempting or agreeing to do anything in violation of any Regulations or Orders adopted pursuant to the Emergency Price Control Act of 1942, establishing maximum prices for any of said Cuban Rock Lobster.

2. Judgment on behalf of the United States against the defendants in the sum of \$10,020.

3. Such other, further, different relief as to the Court may seem just and proper.

Dated at San Francisco, California, this day of May, 1944.

THOMAS C. RYAN,
W. H. BRUNNER,
RALPH GOLUB,

Attorneys for Plaintiff.

[Endorsed]: Filed May 24, 1944. [20]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial on Monday, February 12, 1945, before the Honorable Michael J. Roche, Judge of the United States District Court. The Plaintiff was represented by W. H. Brunner, Esq., and the defendants by Francis Carroll, Esq. After both oral and documentary

evidence was offered on behalf of both parties and the matter having been submitted to the Court for decision, the Court hereby finds as follows:

FINDINGS OF FACT

1. That all of the matters, facts and things alleged and set forth in Count One of plaintiff's complaint are and each of them is true. [21]

2. That in March, 1942, defendant Login Corporation established a maximum price for the sale by it of Cuban Rock Lobster to wholesalers of \$13.50 per case; that during the period covered by the complaint defendant sold 334 cases of Cuban Rock Lobster to wholesalers at a price of \$23.50 per case, or \$10.00 in excess of the maximum price permitted for such sale.

3. That such violation of the price regulations was made inadvertently and was neither willful nor the failure of defendant to take practicable precautions to avoid such violation.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings of fact, the Court concludes:

1. That plaintiff's application for injunction should be and the same is hereby denied.

2. That plaintiff should have judgment against defendant on behalf of the United States for the sum of \$3,340.00.

Let judgment be entered accordingly.

MICHAEL J. ROCHE,

Judge of the United States
District Court.

Dated: March 28, 1945.

Receipt of a copy of the within proposed Findings of Fact and Conclusions of law is admitted this 8th day of March, 1945.

KEESLING & KEIL,

FRANCIS CARROLL,

Attorneys for Defendants.

[Endorsed]: Filed Mar. 28, 1945. [22]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS

Notice Is Hereby Given that The Login Corporation, a corporation, a defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that part of the judgment entered in this action on March 28, 1945, which orders that the plaintiff have judgment against the defendant The Login Corporation for the sum of \$3,340.

Dated: June 6, 1945.

KEESLING & KEIL,

FRANCIS CARROLL,

Attorneys for Appellant, The Login Corporation, a
Corporation.

[Endorsed]: Filed Sept. 5, 1945. [23]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including September 1, 1945, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: July 23, 1945.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed July 23, 1945. [24]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including September 11, 1945, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: September 1, 1945.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed Sept. 1, 1945. [25]

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 23329-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

vs.

THE LOGIN CORPORATION, a Corporation,
and L. P. GAINSBOROUGH,

Appellant.

ORDER EXTENDING TIME FOR FILING OF
RECORD ON APPEAL

Upon consideration, and good cause appearing
therefor;

It Is Hereby Ordered that the time within which
the record on appeal in the above entitled action
may be filed in this court is hereby extended thirty
days to and including the 11th day of October, 1945.

Dated: September 11, 1945.

FRANCIS A. GARRECHT,

Judge of the United States
Circuit Court of Appeals.

[Endorsed]: Filed Sept. 11, 1945, Paul P.
O'Brien, Clerk.

A True Copy. Attest: Sept. 28, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Sept. 28, 1945. [26]

District Court of the United States, Northern
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a full, true, and correct transcript of the Agreed Statement of Case under Rule 76 of the Rules of Civil Procedure in the case of Chester Bowles, Administrator, Office of Price Administration, Plaintiff, vs. The Login Corporation, a corporation, and L. P. Gainsborough, Defendants No. 23329-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 1st day of October, A.D. 1945.

[Seal]

C. W. CALBREATH,
Clerk.

By E. VAN BUREN,
Deputy Clerk. [27]

[Endorsed]: No. 11151. United States Circuit Court of Appeals for the Ninth Circuit. The Login Corporation, a Corporation, Appellant, vs. Chester Bowles, Administrator, Office of Price Administration, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Northern District of California, Southern Division.

Filed October 5, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for the
Ninth Circuit

No. 11151

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee,

vs.

THE LOGIN CORPORATION, a Corporation,
and L. P. GAINSBOROUGH,

Appellant.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD

The appellant, the Login Corporation, hereby adopts as its statement of points relied upon on appeal the statement of points appearing in the agreed

statement of the case in the transcript of the record at pages 13 and 14 of the agreed statement.

The appellant designates for printing the entire transcript of the record filed with the clerk of the above entitled court.

Dated: October 8, 1945.

KEESLING & KEIL,
FRANCIS CARROLL,
Attorneys for Appellant.

[Endorsed]: Filed October 9, 1945, Paul P. O'Brien, Clerk.

